



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF NEUTRAL)
TANDEM-NEW JERSEY, LLC FOR AUTHORITY TO)
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE04010010

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated January 6, 2004, Neutral Tandem-New Jersey, LLC ("Petitioner" or "Neutral Tandem") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide all forms of facilities-based local exchange and inter-exchange telecommunications services in the State of New Jersey. Petitioner has submitted its financial information under seal and has included a sworn affidavit with substantiation for confidential treatment in accordance with the Board's rules for determining confidentiality, N.J.A.C. 14:1-12 et seq. and in compliance with the Open Public Records Act N.J.S.A. 47:1A-1 et seq.

Neutral Tandem is a limited liability company organized under the laws of the State of Delaware. Neutral Tandem is a wholly owned subsidiary of its immediate parent, Neutral Tandem, Inc., a privately held corporation. Neutral Tandem Inc. also owns and/or controls Neutral Tandem-California, LLC, Neutral Tandem-Illinois, LLC and Neutral Tandem-New York, LLC. Petitioner's principal offices are located at Two North LaSalle Street, Suite 1645, Chicago, IL 60602.

Petitioner has submitted copies of its Certificate of Formation from the State of Delaware and its New Jersey Certificate of Authority to Operate as a Foreign Limited Liability Company. According to the Petition, Neutral Tandem was formed to provide all forms of facilities-based local exchange and inter-exchange telecommunications services throughout New Jersey. Petitioner states that at this time it does not seek authority to provide local exchange telecommunications services in the service areas of small or rural local exchange carriers in

New Jersey that qualify for rural exemption outlined in Section 251(f)(1) of the Federal Act. Petitioner states that it intends to request an interconnection and/or resale agreement with Verizon-New Jersey. According to the Petitioner, Neutral Tandem-California, LLC and Neutral Tandem-New York, LLC have applied for facilities-based local exchange and inter-exchange authority in their respective states and Neutral Tandem-Illinois, LLC has been granted facilities-based and inter-exchange authority in the State of Illinois. Petitioner states that it has never been subject to any civil or criminal proceedings.

Petitioner seeks authority to provide all forms of facilities-based local exchange and inter-exchange telecommunications services throughout the State of New Jersey. The Petitioner states that it plans to offer local exchange and inter-exchange services primarily to business customers located in the State of New Jersey through a combination of its own facilities and network elements leased from Verizon – New Jersey. Its exchange service may include, but will not necessarily be limited to, local exchange access services to dedicated and special carrier access services. Petitioner states that it is planning to expand slowly into the New Jersey market over the course of the next year but anticipates a more rapid managed growth over the next five years. Petitioner states that neither Neutral Tandem nor any of its affiliates currently owns or controls any telephone network facilities in the State of New Jersey. Petitioner states that it maintains a toll-free number for its customer service inquiries.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts (“USOA”), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner’s business in the State of New Jersey at Petitioner’s corporate offices in Chicago, Illinois. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, Neutral Tandem states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to Neutral Tandem, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Neutral Tandem's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout New Jersey subject to approval of its tariff. The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is approved by the Board.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N.J.S.A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N.J.S.A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New

Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 3/3/04

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)

KRISTI IZZO
SECRETARY

IN THE MATTER OF THE PETITION OF NEUTRAL TANDEM-NEW JERSEY, LLC
FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES WITHIN
THE STATE OF NEW JERSEY

DOCKET NO. TE04010010

SERVICE LIST

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